IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.1820 OF 2003
(For condonation of delay)
IN
CRIMINAL APPEAL NO.165 OF 2003

The State of Maharashtra .. Applicant.
(Through PI, Talukar Police Stn.
Malegaon, Dist. Nashik)

v/s.

Nanji Shamrao Shelke,
Age 40 yrs., R/o.Jwardi Budruk,
Tal.Malegaon, Dist. Nashik. .. Respondent.

AND

CRIMINAL APPEAL NO.165 OF 2003

The State of Maharashtra .. Appellant.
(Through PI, Talukar Police Stn.
Malegaon, Dist. Nashik)

v/s.

Nanji Shamrao Shelke,
Age 40 yrs., R/o.Jwardi Budruk,
Tal.Malegaon, Dist. Nashik. .. Respondent.

Ms.Usha Kejariwal, Additional Public Prosecutor for
State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 10th March, 2005

P.C.

Heard the learned APP.

2. The present respondent was charged under section 302 IPC for having committed the murder of Kiran by assaulting him with the knife below the stomach. Upon conclusion of the trial vide judgment dated 9.8.2002, the Additional Sessions Judge, Malegaon convicted the accused-respondent under section 304 part-II IPC and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.5000/- and in default to suffer rigorous imprisonment for six months. Aggrieved by the said judgment, the State preferred criminal appeal for enhancement of sentence. The said appeal suffers from delay of 109 days and accordingly, application has been made for condonation of delay.

3. Notice was issued to the respondent on the application for condonation of delay way back on 16.6.2003. For about 20 months since then, the sole respondent has not been served.

4. In the circumstances, we asked the learned Additional Public Prosecutor to address us on the merits of the criminal appeal assuming that the criminal appeal was within time.

5. We also perused the impugned judgment.

6. On 4.10.2000, at about 07.00 p.m. the deceased Kiran was standing near the tea stall. The accused-respondent is alleged to have inflicted a knife blow on Kiran below the portion of his stomach and ran away. Kiran died because of the said injury. The injury sustained by Kiran as per the medical evidence was thus-

> "Penetrating wound over right lower side of abdomen directing downward towards bladder right to pubic symphysis, sharp edges. Size:-2 cms x 1/2 cms."

7. On the basis of the evidence on record, the trial court found that the offence committed by the accused-respondent was covered by section 304 Part-II of IPC and accordingly, sentenced him as aforesaid.

8. There is no challenge by the State in so far as acquittal of the accused-respondent under section 302 IPC is concerned. In the facts and circumstances of the case, the sentence awarded by the learned trial court to the accused-respondent for the offence punishable under section 304 Part-II IPC cannot be said to be inadequate. We are, therefore, of the considered view that even if the appeal was in time, it did not deserve to be admitted.

9. Criminal application for enhancement of sentence and criminal application for condonation of delay are disposed of accordingly.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)